

(2023) 03 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Criminal Case No. 9922, 10075 Of 2023

Dilip Kumar Puri And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 01-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Criminal Procedure, 1973 — Section 154, 154(3), 156(1), 156(3), 173, 173(8), 190, 200, 482
Indian Penal Code, 1860 — Section 34, 120B, 166, 294, 306, 323, 341, 342, 506
Scheduled Caste And Scheduled Tribe (Prevention Of Atrocities) Act, 1989 — Section 3, 4

Citation : (2023) 03 MP CK 0016

Hon'ble Judges : Vijay Kumar Shukla, J

Bench : Single Bench

Advocate : Ajay Bagadia, Anuradha Bagadiya, Raghvendra Singh Bais

Final Decision : Dismissed

Judgement

Vijay Kumar Shukla, J

1. Both the petitions under Section 482 of the Code of Criminal Procedure seeking quashment of the common order dated 16.02.2023 and, therefore, they are being decided by this common order.

2) These are the petitions under Section 482 of the Code of Criminal Procedure seeking quashment of the common order dated 16.02.2023 passed in Case No. 526/2023 by the Special Judge directing for registering case for investigation against the present applicants and to submit final report under Section 173 Cr.P.C.

3) An application under Section 156(3) Cr.P.C. was filed by respondent No.2 brother of the deceased seeking registering case for investigation for commission of offences under Section 306, 120-B, 294, 323, 506, 34, 341, 342, 166 r/w Section 3 & 4 of the Scheduled Caste and Scheduled Tribe (Prevention of

Atrocities) Act, 1989.

4) The background of the case is that the brother of the complainant Akash Badia was having an affair with a girl Jhanvi Sharma. Since both of them came from a different caste and sections of the society, a missing report 21/2022 was lodged on 09.02.2022 by the father of Jhanvi Sharma at Police Station Aerodrum, Indore. The accused persons are police officers in the police department. It is further stated that co-accused Vikas Sharma, who was working as Sub-Inspector came to the house on 09.02.2022 and used some caste indicative words against Akash Badia's father stating therein that they should stay in their limits or else the family shall suffer the consequences. The missing persons viz. Akash and Jhanvi were found on 10.02.2022 by the mother of Akash and the mother informed Sub-Inspector, Vikas Sharma that he has both these persons present in front of her and that she will produce them at Police Station. It is stated that on the statement of the mother, Sub-Inspector Vikas Sharma told the mother of Akash Badia that they should be brought to the Police Station Chandan Nagar instead. It is alleged in the application under Section 156(3) Cr.P.C. that when Akash and Jhanvi were brought to the Police Station Chandan Nagar by Akash's mother, Vikas Sharma (who was then posted at Tejaji Nagar, Police Station) administered some beating to Akash and also used some caste indicative words against Akash's mother.

5) It is alleged that Akash due to the beating administered by both accused persons Vikash Sharma and Dilip Kumar Puri, committed suicide on 16.02.2022. One note written by deceased Akash on his mobile has been found stating that the applicants are responsible for his death. The complaints were made to the Police Station and also to the Commissioner of Police, but no action was taken on the same. Thereafter the application under Section 156(3) Cr.P.C. was filed before the Magistrate on which direction for registering case, investigation and to submit final report under Section 173 Cr.P.C. has been issued by the impugned order. The learned Magistrate has allowed the application under Section 156(3) of Cr.P.C. directing for registering of case and investigation and thereafter to submit final report under Section 173 of Cr.P.C. after considering the allegations contained in the application.

6) Counsel for the applicant submits that the Magistrate has passed the order under Section 156(3) of Cr.P.C. without there being a private complaint and, therefore, the order is contrary to the law. In support of his submission, he has placed reliance on a judgment passed by coordinate Bench in the case of Sureshchandra Gondal vs. Vishnu Dixit reported in 2009 Cr.L.R. (MP) 518.

7) The sole question arises for consideration is that whether the Magistrate could have entertained an application under Section 156(3) Cr.P.C. and could have passed an order for registration of case for investigation without filing complaint under Section 190 Cr.P.C..

8) In the case of Sakiri Vasu vs State Of U.P. And Others ((2008)2 SCC 409), the

Apex Court has held as under:-

11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

13. The same view was taken by this Court in *Dilawar Singh vs. State of Delhi* JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C. 14. Section 156 (3) states:

Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.

The words as above-mentioned obviously refer to Section 156 (1), which contemplates investigation by the officer in charge of the Police Station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide *State of Bihar vs. A.C. Saldanna* AIR 1980 SC 326 (para 19).

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has

not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

24. In view of the above-mentioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

27 . As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

(Emphasis supplied)

9) Recently the Apex Court in the case of M.Subramaniam Vs. S. Janaki (Cr.A. No.102 of 2011) decided on 20/3/2020, has held as under:-

6. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hent Dhage mant Yashwaand Others ((2016)6 SCC 277), in which it is observed.

2. This Court has held in Sakiri Vasu v. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) CrPC. If such an application under Section 156(3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have

said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156(3) CrPC and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in Sakiri Vasu case, the impugned judgment of the High Court cannot be sustained and is hereby set aside. The Magistrate concerned is directed to ensure proper investigation into the alleged offence under Section 156(3) CrPC and if he deems it necessary, he can also recommend to the SSP/SP concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate (as investigation is the job of the police). Parties may produce any material they wish before the Magistrate concerned. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.

(Emphasis Supplied)

10) Following the aforesaid judgments passed by the Apex Court, similar view has been taken by the Division Bench of this Court in the case of Shweta Bhadoriya vs. State of M.P. & Ors. 2017 (1) MPLJ (Cri) 338. It has been held that there are 4 different remedies available under Criminal Procedure Code for the informant/victim to initiate prosecution in respect of the cognizable/non-cognizable offence which is alleged in the first information furnished which fails to invoke response from the police. The relevant paras of the said judgment reads as under:-

3.2 The Code of Criminal Procedure provides various avenues before the informant / victim to initiate criminal prosecution. The first avenue is of lodging of FIR under Section 154(1)/154(3) which can be availed by the victim and as well as a stranger to the offence, provided the first information discloses commission of cognizable offence. The lodging of FIR under Section 154 Cr.P.C. sets the investigative machinery into motion without prior permission of the Magistrate as is otherwise required for non- cognizable offences.

3.3 The second avenue available to the victim and as well as a stranger to the cognizable offence, is under section 156(3) by approaching the concerned Magistrate by informing commission of cognizable offence. The Magistrate can then conduct an enquiry himself or direct the concerned police station to register the offence alleged, thereby triggering the investigation.

3.4 The third avenue available is under Section 190 Cr.P.C empowering the competent Magistrate to take cognizance of any offence upon receipt of complaint of facts containing allegation constituting the offence, or upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge of commission of cognizable and as well as non-cognizable offence, except offences punishable under Chapter XX of IPC, for which procedure prescribed u/s 198 Cr.P.C. is to be adhered to.

3.5 The fourth avenue is under Section 200 Cr.P.C where a complaint, oral or in writing if made before the competent Magistrate leads to hearing by the Magistrate on the question of taking cognizance of offence or not and if it is found that complaint discloses commission of any offence punishable in law then the Magistrate issues summons to the proposed WA.247/2016 Shweta Bhadauria Vs. State of M.P. & Ors. accused on appearance of whom statements of rival parties are recorded and the Magistrate decides on the question of framing of charge or discharging the accused. If charges are framed then trial proceeds.

(Emphasis Supplied)

10) In view of the aforesaid, I do not find any merit in the contention of the counsel for the applicants that the application under Section 156(3) Cr.P.C. was not maintainable without filing a complaint before the Magistrate. All the remedies available to the complainant are independent remedies and, therefore, the application under Section 156(3) could have been directly filed before the Magistrate without filing criminal complaint under Section 190 Cr.P.C. There is no illegality in the impugned order, hence, both the petitions under Section 482 Cr.P.C. are dismissed.